

**United States Department of Labor
Employees' Compensation Appeals Board**

M.A., Appellant

and

**U.S. POSTAL SERVICE, MIDDLESEX ESSEX
PROCESSING & DISTRIBUTION CENTER,
North Reading, MA, Employer**

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**Docket No. 20-0657
Issued: December 15, 2020**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

On February 3, 2020 appellant filed a timely appeal from a January 13, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-0657.¹

On November 27, 2019 appellant, then a 59-year-old supervisor, filed a traumatic injury claim (Form CA-1) alleging that on November 26, 2019 she sustained swelling to the face and lip(s) when she slipped and hit her face on the floor while in the performance of duty. Appellant's supervisor acknowledged on the claim form that the injury occurred in the performance of duty.

In a December 9, 2019 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and requested that she complete and return a factual development questionnaire

¹ The Board notes that OWCP received additional evidence following the January 13, 2020 decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

in order to provide a detailed description of the alleged employment incident that she believed caused her injury. OWCP afforded appellant 30 days to respond.

Appellant completed the factual development questionnaire on January 8, 2020. She explained that she had been counting boxes and became caught in a strip that tied bundles of magazines, falling to the floor head-first. Appellant claimed that she broke her lips open in the fall. She called for help from a coworker and was taken to the hospital *via* ambulance. The immediate effects of appellant's claimed injury included mouth, neck, and head pain, as well as bleeding from the mouth. She also submitted a witness statement from a coworker, L.Y., who observed appellant on the floor of the mail storage area with her hand raised and signaling for help. L.Y. saw blood on her mouth and on the floor. Stamped markings on the completed questionnaire, narrative account, and witness statement indicated a date of receipt by OWCP on January 13, 2020 at 10:24 a.m.²

By decision dated January 13, 2020, OWCP denied appellant's traumatic injury claim finding that she had not submitted the necessary factual evidence to establish that the November 26, 2019 incident occurred at work as described. It found that appellant had not provided a description of how the injury occurred and had not provided any factual evidence of an injury occurring at work. OWCP also found that appellant had not submitted any medical evidence of a diagnosed condition causally related to the alleged incident. Therefore it concluded that she had not established fact of injury. There is no indication that appellant's January 8, 2020 response to OWCP's questionnaire was reviewed.

The Board has duly considered the matter and finds that the case is not in posture for a decision. In the case of *William A. Couch*,³ the Board held that when adjudicating a claim OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

In OWCP's January 13, 2020 decision, it stated that appellant had not provided a description of how the injury occurred and had not provided factual evidence of an injury occurring at work. Appellant's January 8, 2020 response to OWCP's questionnaire was not reviewed. However, the record reflects that OWCP received appellant's January 8, 2020 response to its factual development questionnaire on January 13, 2020 as demonstrated by the stamps on the received documents indicating the date and time of receipt by OWCP.⁴

It is crucial that OWCP address all evidence received prior to the issuance of its final decision, as the Board's decisions are final with regard to the subject matter appealed.⁵ Whether OWCP receives relevant evidence on the date of the decision or several days prior, such evidence

² This evidence was scanned into OWCP's Integrated Federal Employees' Compensation System (iFECS) case record on January 16, 2020.

³ 41 ECAB 548 (1990); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

⁴ *See I.L.*, Docket No. 19-0077 (issued July 26, 2019); *Linda Johnson*, 45 ECAB 439 (1994) (evidence received the same day as the issuance of OWCP's decision, but not previously considered, requires remand for *de novo* review).

⁵ *See C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch*, 41 ECAB 548, 553 (1990).

must be considered.⁶ The Board finds that this case is not in posture for decision, as OWCP did not review the above-noted evidence in its January 13, 2020 decision.⁷ It makes no difference that the claims examiner was not directly in possession of the evidence on January 13, 2020, as Board precedent envisions evidence received by OWCP, but not yet associated with the case record when the final decision is issued.⁸ As the January 8, 2020 response to OWCP's factual development questionnaire was in OWCP's possession at the time it issued its January 13, 2020 decision, it must be considered by OWCP in weighing the evidence.⁹ On remand OWCP shall review all evidence of record, and following any further development as it deems necessary, it shall issue an appropriate *de novo* decision.¹⁰

IT IS HEREBY ORDERED THAT the January 13, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further action consistent with this order of the Board.

Issued: December 15, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁶ *S.M.*, Docket No. 16-0852 (issued November 1, 2017); *Willard McKennon*, 51 ECAB 145 (1999).

⁷ *See M.T.*, Docket No. 20-0757 (issued September 30, 2020).

⁸ *See Yvette N. Davis supra* note 5. In *Yvette N. Davis* the Board explained as follows: "Although the claims examiner did not realize that the evidence was in [OWCP's] possession ... Board precedent requires [OWCP] to review all evidence submitted by a claimant and received by [OWCP] prior to the issuance of its final decision, including evidence received on the date of the decision. It makes no difference that the claims examiner was not directly in possession of the evidence. Indeed, Board precedent envisions evidence received by [OWCP] but not yet associated with the case record when the final decision is issued."

⁹ *See Cheryl P. Beard*, Docket No. 02-0786 (issued August 13, 2002).

¹⁰ *M.T.*, *supra* note 7.